

REMARKS

The present Amendment is in response to the Office Action mailed April 18, 2007, in the above-identified application.

In the present Amendment, Applicants have amended claims 1-9 as indicated above. Independent claims 1 and 6 have been amended to more clearly distinguish the claims over the prior art cited by the Examiner. The amendment of claims 2-5 and 7-9 has been made to place the claims in better form in accordance with the requirements of the M.P.E.P. All of the above-mentioned amendments are fully supported by the originally filed specification and add no new matter.

Applicants have also added new claims 10 and 11, which depend from independent claims 1 and 6, respectively. New claims 10 and 11 are fully supported by the originally filed specification and add no new matter. More specifically, support for new claims 10 and 11 is found, *inter alia*, in the specification at paragraph [0108] thereof and drawing FIG. 8B.

The Examiner rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,122,130 to Keller et al. The Examiner has referred to the embodiment shown in FIGS. 7-9 of Keller for rejecting the claims. In response, Applicants respectfully assert that independent claim 1 is unanticipated by Keller because the cited reference neither discloses nor suggests an instrument for holding an intervertebral spacer having a "claw subassembly including a first pincer which is fixed at the distal end of the shaft and a second pincer which is pivotally coupled with said first pincer for rotating into and out of spacer holding association with said first pincer." Claims 2-5 and 10 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Independent claim 6 is unanticipated by Keller because the reference neither discloses nor suggests an intervertebral spacer grasping instrument including "a pair of pincers, a first of said pair being fixed, and a second being pivotally coupled to said first pincer in open-biased opposition thereto." Claims 7-9 and 11 are unanticipated, *inter alia*, by virtue of their dependence from claim 6, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 1-4 and 6-9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 801,151 to McKeever. On page 6 of the Office Action, the Examiner asserts his opinion that the distal end of McKeever (FIG. 2) includes curved surfaces. Applicants respectfully assert that the curved surfaces in the present application extend to the "distal-most" end of the instrument. McKeever does not teach or suggest that the curved surfaces extend to a distal-most end of the wrench.

In response to the rejection under McKeever, Applicants respectfully assert that independent claim 1 is unanticipated by McKeever because the reference neither teaches nor suggests an instrument for holding an intervertebral spacer having first and second pincers "wherein said first and second pincers have opposing inner curved surfaces that extend to a distal-most end of said instrument." Claims 2-5 and 10 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Independent claim 6 is unanticipated by McKeever because the cited reference neither discloses nor suggests an intervertebral spacer grasping instrument having first and second pincers with "said first and second pincers having opposing inner curved surfaces that extend to a distal-most end of said instrument." Claims 7-9 and 11 are unanticipated,

*inter alia*, by virtue of their dependence from claim 6, which is unanticipated for the reasons set forth above.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 13, 2007

Respectfully submitted,

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